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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,039	07/12/2001	Brendan J. Kitts	VIGN1130	6148
44654	7590	02/03/2006	EXAMINER	
SPRINKLE IP LAW GROUP 1301 W. 25TH STREET SUITE 408 AUSTIN, TX 78705				GRAYSAY, TAMARA L
		ART UNIT		PAPER NUMBER
		3636		

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.	KITTS, BRENDAN J.
Examiner Tamara L. Graysay	Art Unit 3636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
(b)  They raise the issue of new matter (see NOTE below);  
(c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 19.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-18, as per the final rejection mailed 22 November 2005.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
\_\_\_\_\_.  
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13.  Other: \_\_\_\_\_.

Application/Control Number: 09/682,039

Art Unit: 3636

Continuation of 3. NOTE:

3(a): Applicant's reliance on *In re Fine* is acknowledged, however, prosecution is closed. The additional dependent claims require more than a cursory review because applicant is now adding claim(s) not previously of record and of scope not previously considered and/or searched, thus requiring further consideration and/or search by the examiner. This issue is independent of whether or not the added claim(s) depend upon a previously allowed claim. Further, the claims have been amended such that their scope has changed, i.e., they require further consideration and/or search. Not all claims have not been reviewed in detail, however, a few examples of how the amendment requires further search and/or consideration follow:

- Newly added dependent claim 25 raises an issue under 35 U.S.C. 112, second paragraph, because the claim is not clear whether the code for determining correlations between one or more variable and the demand on quantity is related to or distinguished from the code for generating a first matrix of correlation factors.
- Newly added dependent claim 26 requires further consideration as noted in 3(b) below.
- Newly added independent claim 27 adds limitations including, but not limited to a computer system having a database and program instructions, without a computer processor or means for processing the information. The scope of this claim differs from the previously claimed method and data processing system, thus requiring further consideration and/or search.
- Newly added dependent claims 28-33 add limitations that were not previously claimed.
- Newly added dependent claims 28-33 do not "parallel" the claims dependent upon claim 19.
- Newly added claim 32 raises an issue similar to that noted with regard to claim 25 above.
- Newly added claim 33 raises an issue similar to that noted with regard to claim 26 above as well as issue(s) under 112, second paragraph, because the term "the one or more variables" lacks antecedent basis in the claim.

3(b): Newly added claim 26 raises the issue of new matter, i.e., whether the claimed subject matter, including but not limited to the terms "externalities, lag-demand-term, and global-price-term" and subject matter encompassed by the terms, are supported by the original disclosure. Applicant has not provided remarks specific to show support for the limitation(s) not previously claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
1/31/06  
Tamara L. Graysay  
Examiner  
Art Unit 3636

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